

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

PONCHO FOOD STORE INC.
Plaintiff

V.

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, A CHUBB
COMPANY
Defendant

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C.A. No. 7:21-cv-00111

**DEFENDANT WESTCHESTER SURPLUS LINES
INSURANCE COMPANY’S NOTICE OF REMOVAL**

Defendant Westchester Surplus Lines Insurance Company (“Defendant”), gives notice of removal of this civil action from the 93rd Judicial District Court, Hidalgo County, Texas, to this Court:

1. Plaintiff filed its Original Petition on or about February 11, 2021.
2. Defendant was served with process on February 26, 2021. This Notice for Removal is therefore timely filed under 28 U.S.C. §1446(b) within 30 days after the receipt by Underwriters of the first notice of the Plaintiff’s Original Petition (the “Petition”).
3. This action is one of a civil nature for damages caused by alleged wrongful acts of Defendant in the investigation and payment of losses in Hidalgo County, Texas under a policy of insurance.
4. Plaintiff, Poncho Food Store, Inc., is a domestic corporation, incorporated in the State of Texas, with its principal place of business in Hidalgo County, Texas.
5. Defendant, Westchester Surplus Lines Insurance Company is a citizen of a foreign state. It is a company organized under the laws of the State of Georgia with its principal place of business in Pennsylvania.

6. The basis for this removal and this Court's jurisdiction is diversity of citizenship. 28 U.S.C. §1332. There is complete diversity of citizenship between Plaintiff and Defendant because Plaintiff is a citizen of the State of Texas and Defendant is a citizen of a foreign state, as shown above. The amount in controversy exceeds the jurisdictional threshold as facially apparent upon review of Plaintiff's Original Petition wherein Plaintiff seeks monetary relief by reference Texas Rule of Civil Procedure 47(c) and expressly stating that Plaintiff seeks of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs. Also, Plaintiff's pre-litigation demand letter alleges that the amount owed to Plaintiff under the Policy is \$126,230.83 plus amounts for attorney's fees. *See* U.S.C. §1446(c).

7. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

8. The United States District Court has original jurisdiction under 28 U.S.C. §1332. This action is removable under 28 U.S.C. §1441(a) and (b).

9. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending.

10. Plaintiff's Original Petition included a request for a jury trial.

11. Pursuant to Local Rule 81, Defendant attaches the following along with the Civil Cover Sheet. Defendant is separately filing its Disclosure Statement under Fed. R. Civ. P. 7.1:

- a) a copy of all executed process in the case (at this time, the unexecuted citation is attached with return of service information);
- b) a copy of Plaintiff's Original Petition;
- c) a copy of the answer filed in state court on behalf of Defendant,
- d) a copy of the docket sheet;
- e) an index of matters being filed; and
- f) list of the names, addresses, and telephone numbers of all counsel who have appeared in this action and their respective parties.

Defendant, Westchester Surplus Lines Insurance Company, requests that the above-described action now pending in the 93rd Judicial District Court, Hidalgo County, Texas be removed to this Honorable Court.

Respectfully submitted,

CHAFFE MCCALL, L.L.P.

/s/ Frank A. Piccolo

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CERTIFICATE OF SERVICE

In compliance with Rule 5 of the Federal Rules of Civil Procedure, I certify that on this the 25th day of March, 2021, a true and correct copy of the above and foregoing document was served on all known counsel of record via electronic service.

/s/ Frank A. Piccolo

Frank A. Piccolo